

## DEPARTMENT OF HEALTH

## NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of an amendment to section 932 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Speech, Hearing and Language Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for speech, hearing, and language services provided by licensed or certified speech pathologists or audiologists to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

This rulemaking amends the rules previously published at 49 DCR 8716 (September 20, 2002) by adding more effective planning and follow up reporting.

The District of Columbia Medicaid Program also is modifying the Waiver to reflect these changes. The Council of the District of Columbia has approved the corresponding Waiver. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services has also approved the Waiver effective November 20, 2007.

A notice of emergency and proposed rulemaking was published in the *DC Register* on December 7, 2007 (54 DCR 011740). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *DC Register*.

Section 932 (Speech, Hearing and Language Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

**932 SPEECH, HEARING, AND LANGUAGE SERVICES**

- 932.1 Speech, hearing and language services shall be reimbursed by the Medicaid Program for each participant with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 932.2 To be eligible for reimbursement, speech, hearing, and language services shall be:
- (a) Ordered by a physician if the individual has any history of aspiration, swallowing problems, tube feeding, or other medical issues;

- (b) Recommended by the interdisciplinary team if the issues are not medical;
- (c) Reasonable and necessary to the treatment of the person's illness, injury, or long term disability or to the restoration or maintenance of function affected by the injury, illness or long term disability; and
- (d) Included in the person's individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care.

932.3 Speech, hearing and language services may be used to:

- (a) Address swallowing disorders;
- (b) Assess communicative disorders;
- (c) Assess potential for clearer speech;
- (d) Assess potential for use of augmentative and alternative speech devices, methods, or strategies;
- (e) Assess potential for sign language or other expressive communication methods;
- (f) Conduct environmental reviews of communication in places employment, residence, and other sites as necessary; or
- (g) Assist with recovery from a vocal disorder.

932.4 Speech, hearing and language services shall include, as necessary, the following:

- (a) A comprehensive assessment to determine the presence or absence of swallowing disorders (dysphagia);
- (b) A comprehensive assessment of communicative disorders;
- (c) A background review and current functional review of communication capabilities in different environments;
- (d) A needs assessment for the use of augmentative and alternative speech devices, methods, or strategies;
- (e) A needs assessment for the use of adaptive eating equipment;

- (f) Assisting persons with voice disorders to develop proper control of vocal and respiratory systems for correct voice production;
- (g) Teaching and training the person, family, provider caregivers, or other caregivers to augment the speech-language communication program; and
- (h) Aural rehabilitation by teaching sign language and/or lip reading to people who have hearing loss.

932.5 Speech, hearing and language service providers, without regard to their employer of record, shall be selected by the person receiving services or their guardian or legal representative and shall be answerable to the person receiving services. Any organization substituting practitioners for more than a two (2) week period or four (4) visits due to emergency or lack of availability shall request a case conference with the Department on Disability Services Case Manager in order to arrange for the person receiving services to select a new practitioner.

932.6 The speech, hearing and language service provider shall be responsible for providing written documentation in the form of reports, assessments for speech, hearing and language services, physician's orders, visitation notes, progress notes, and other pertinent documentation of the person's progress or lack of progress, medical conditions, functional losses, and treatment goals that demonstrate that the services are and continue to be reasonable and necessary. The documentation shall include evidence that services did not exceed the authorized frequency and duration. The agency or speech, hearing and language service provider in private practice shall maintain a copy of the documentation for at least six (6) years after the person's date of service.

932.7 Each person providing speech, hearing and language services shall be an employee of a home health agency or social service agency or a speech pathologist or audiologist in private practice with a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for Speech, Hearing and Language Services under the Waiver.

932.8 In addition to the other requirements of this section, the speech pathologist or audiologist in private practice shall meet all of the following conditions:

- (a) Maintain a private office, even if services are always furnished in the person's home;
- (b) Meet all state and local licensure laws and rules;
- (c) Maintain a minimum of one (1) million dollars in liability insurance;
- (d) If services are provided in a private practice office space, the space

shall be owned, leased or rented by the private practice and be used exclusively for the purpose of operating the private practice; and

- (e) An assistant or aide shall be personally supervised by the speech pathologist or audiologist and employed by the speech pathologist or audiologist, by the partnership group to which the speech pathologist or audiologist belongs, or by the same private practice that employs the speech pathologist or audiologist. Personal supervision requires the speech pathologist or audiologist to be in the room during the performance of the service.

932.9 Each person providing speech, hearing and language services shall be a speech pathologist or audiologist who meets all of the following requirements:

- (a) Have the ability to develop and implement a plan of care based on an assessment of the person's speech, hearing and language needs;
- (b) Have a minimum of two (2) years of experience as a speech pathologist or audiologist;
- (c) Be acceptable to the person to whom services are provided;
- (d) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician;
- (e) Have the ability to communicate with the person to whom services are provided;
- (f) Be able to read, write, and speak the English language; and
- (h) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, as amended, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44-551 *et seq.*).

932.10 The reimbursement rate for speech, hearing and language services assessments shall be sixty-five dollars (\$65.00) an hour for a full assessment of the person, preparation of summary documentation, and delivery of that documentation. The billable unit of service for speech, hearing and language therapy services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service. The tasks shall include updating medical records and verifying that the documentation was delivered to the primary care physician (as necessary), DDS Case Manager, and the place of residence of the person receiving services.

- 932.11 The reimbursement rate for ongoing speech, hearing and language services shall be sixty-five dollars (\$65.00) per hour for the period specified in the speech, hearing and language report and approved by a physician for treatment of a swallowing disorder. The billable unit of service for speech, hearing and language therapy services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.
- 932.12 For persons between the ages of 18 and 21 years old, Early Periodic Screening and Diagnostic Treatment services under the District of Columbia State Plan for Medical Assistance shall be fully utilized before accessing speech, hearing and language services under the Waiver.

932.99 **DEFINITIONS**

When used in this section, the following terms and phrases shall have the meanings ascribed:

**Audiologist** – A person who meets the education and experience requirements for a Certificate of Clinical Competence in the area of audiology granted by the American Speech Hearing Language Association or is licensed or certified as an audiologist in the state where the services are provided.

**Clinical Record** – A comprehensive compilation of medical and other data that identifies the person and justifies and describes the diagnosis and treatment of the person.

**EPSDT** – Early and Periodic Screening, Diagnostic, and Treatment Services are designed for Medicaid-eligible children under the age of twenty-one (21) that include periodic screenings to identify physical and mental conditions, vision, hearing, and dental, as well as diagnostic and treatment services to correct conditions identified during screenings.

**Individual Habilitation Plan (IHP)** – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

**Individual Support Plan (ISP)** – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

**Physician** – A person who is authorized to practice medicine pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*) or licensed as a physician in the jurisdiction where services are provided.

**Person** – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

**Plan of Care** – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

**Private Practice** – An individual whose practice is an unincorporated solo practice or unincorporated partnership. Private practice also includes an individual who is practicing therapy as an employee of an unincorporated practice, a professional corporation, or other incorporated therapy practice. Private practice does not include individuals when they are working as employees of a hospital, nursing facility, clinic, home health agency, rehabilitation facility or any other entity that has a Medicaid provider agreement which includes physical therapy in the provider's reimbursement rate.

**Progress Note** – A dated, written notation by a member of the health care team that summarizes facts about a person's care and response to treatment during a given period of time.

**Provider** – Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

**Speech Pathologist** – A person who meets the education and experience requirements for a Certificate of Clinical Competence in the areas of speech pathology granted by the American Speech Hearing Language Association or is licensed or certified as a speech pathologist in the state where the services are provided.

**Waiver** – Shall mean the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.